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No. 80-644

In The

Supreme Court of the United States

OCTOBER TERM, 1980

G. D. SEARLE & CO.,
Petitioner,

-vs-

SUSAN COHN AND WALTER COHN,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

MOTION OF THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE
and
FOR LEAVE TO ARGUE ORALLY ON THE SIDE OF RESPONDENTS, WITH THEIR CONSENT,
and
BRIEF OF THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA AS AMICUS CURIAE

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MOTION OF THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE and FOR LEAVE TO ARGUE ORALLY ON THE SIDE OF RESPONDENTS, WITH THEIR CONSENT

The Association of Trial Lawyers of America hereby moves, pursuent to Rules 36 and 42 of the Rules of this Court, for leave to file the attached brief as amicus curiae, suggesting that the decision below should be affirmed.[1]

[1] Pursuant to Rule 36.3 of the Rules of this Court, the Association of Trial Lawyers of America has (continued)

The Association of Trial Lawyers of America is a national bar association comprised of attorneys regularly involved in the trial and appeal of all manner of contested matters. Its membership also includes sitting judges, law professors, lawyer-administrators, and other attorneys. This Association, whose membership now numbers in excess of 40,000, has authorized its participation in this cause as amicus curiae, through its appropriate officers and committees.

In this litigation, this Association seeks to represent the interests of all persons who have been or will be injured, and of the survivors of those who have been or will be killed, as a direct and proximate result of the negligence of others.

The clients regularly represented by the members of this Association include persons injured, and the survivors of persons killed, as a result of the negligence of tortfeasors who are not

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requested, but has not received, the Petitioner's consent to the filing of the attached brief as amicus curiae. Respondent has consented thereto.

represented for service of process within the jurisdiction, and who are not otherwise easy to locate and/or amenable to service of process. Thus, without statutes such as the one upheld below in this case, many such persons will find themselves without any remedy for the wrong done to them.

For these reasons, and also because of this Association's strong belief in the importance of maintaining the integrity of state legislative enactments, and of decisions regarding their validity by State Courts, this Association considers it important that the decision below be affirmed in this case.

This Association particularly urges the affirmance of the decision below in this case because of the nationwide importance to large numbers of people of upholding statutes such as the one involved here, and of sustaining the integrity of legislative enactments and state court interpretations; the Association's interest also arises from its desire to speak for the many individuals who are or will thus become interested in the outcome of this case.

It is this Association's position that it ill behooves a tortfeasor who has caused injury or death, through its product, service or otherwise, to contend that it should have the benefit of the running of a limitation period during the time when it was not represented within the jurisdiction for service of process, especially where the state legislative scheme, and judicial pronouncements, are otherwise.

This Association also respectfully requests leave, in acordance with Rule 38.7 of the Rules of this Court, to argue orally on the side of Respondents. (Respondents have consented to this application.)

This Association believes that its participation in the argument of this case will enable it to render greater assistance to, and materially aid, this Honorable Court in rendering a just decision on the merits of this appeal.

This Association represents more than 40,000 members directly, and seeks to speak, albeit indirectly, for many more of their clients and of citizens of these United States regarding the important issues raised here. This Association

has attempted to state its positions in its brief as clearly as is possible, consistent with the goal of keeping its brief of reasonable length. Necessarily, written positions cannot substitute for cogent, organized oral explication and, even more importantly, for the availability of counsel at the argument to respond to such questions as may arise. Clearly, written exposition and oral presentation complement each other in the most beneficial ways and this Association prays this Honorable Court to permit it both in this cause.

Wherefore, the Association of Trial Lawyers of America prays that this Honorable Court grant its motion to file its brief amicus curiae and to argue orally on the side of Respondents herein.

Respectfully submitted,

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DATED: September 17, 1981

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BRIEF OF THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

The interest of the Association of Trial Lawyers of America ("ATLA") is set forth in the accompanying motion for leave to file this brief as amicus curiae in support of the position taken by Respondents Susan Cohn and Walter Cohn.

SUMMARY OF ARGUMENT

The within appeal concerns the constitutionality of N.J.S.A. 2A:14-22 ("New Jersey tolling

statute"). ATLA endorses in full the arguments advanced by Respondents to the effect that New Jersey's tolling statute does not violate the Equal Protection, Due Process nor Commerce Clauses. The purpose in filing this amicus brief is to complement the brief filed by Respondents by stressing certain basic tenets of law as they relate to the constitutional challenges to the New Jersey tolling statute.

A basic principle of statutory construction particularly relevant herein holds that the construction of a state statute by the highest court of that state is binding upon the United States Supreme Court. **Brown v. Ohio, 432 U.S. 161, 167, 53 L.Ed. 2d 187, 195, 97 S.Ct. 2221 (1977); Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 837, 56 L.Ed. 2d 1, 9, 98 S.Ct. 1535 (1978).**

Of further relevance is the consistently liberal construction given to statutes of limitation by the New Jersey courts. Preserving a plaintiff's right to have his cause of action determined on the merits has resulted in liberal interpretation of New Jersey statutes of limitation.

Galligan v. Westfield Centre Service, Inc., 82 N.J. 188 (1980); Velmohos v. Maren Engineering Corp., 83 N.J. 282, 293 (1980). The New Jersey Supreme Court followed this basic rule of liberal statutory construction in **Velmohos** and found (a) a foreign corporation amenable to New Jersey's long-arm jurisdiction was not represented in New Jersey and was therefore subject to the tolling statute; and (b) in order to become "represented" in New Jersey a foreign corporation must merely designate an agent for service of process within the state.

Keeping in mind the foregoing statutory construction by the New Jersey Supreme Court in **Velmohos**, we turn to the constitutional arguments raised by Petitioner G.D. Searle ("Searle"). First, it is hornbook law that the New Jersey tolling statute is entitled to a strong presumption of validity. **McGowan v. Maryland, 366 U.S. 420, 6 L.Ed. 2d 393, 81 S.Ct. 1101 (1961).** The burden of proving that the statute is invalid is clearly on the challenging party. **Morey v. Doud, 354 U.S. 457, 1 L.Ed. 2d 1485, 77 S.Ct. 1344 (1957).**

ATLA submits that a thorough analysis of the Due Process, Equal Protection and Commerce Clause arguments raised by Petitioner indicates that they are without merit. First, it is clear that the classification drawn by the New Jersey tolling statute, between foreign corporations who are "represented" within New Jersey and those who are not, rationally furthers at least two legitimate state purposes. Tolling of the statute of limitations gives New Jersey plaintiffs additional time to identify and locate foreign defendants. It also recognizes the significant difference in effecting service of process on a corporation represented in the State of New Jersey compared to effecting long-arm service by any method upon an unrepresented foreign corporation. The tolling statute violates neither the Due Process nor Equal Protection Clauses.

Equally evident is the fact that **N.J.S.A. 2A:14-22** does not violate the Commerce Clause. The tolling statute creates no undue burden on interstate commerce. It is clear that the statute as construed by the New Jersey Supreme Court in **Velmohos, supra,** does not prevent any corporation

from engaging in commerce within the state nor from defending or maintaining an action in New Jersey. N.J.S.A 14A:13-3(2)(a); N.J.S.A. 14A:13-11(2).

ARGUMENT

POINT I

THE CONSTRUCTION GIVEN TO N.J.S.A. 2A:14-22 BY THE NEW JERSEY SUPREME COURT IN VELMOHOS IS BINDING UPON THIS COURT.

Prior to addressing the issue of the constitutionality of the state statute in question, **N.J.S.A. 2A:14-22**, ATLA submits that it is necessary to be mindful of certain basic concepts of statutory construction.

A. The Construction Of A State Statute By The State's Highest Court Is Binding Upon The United States Supreme Court.

It is an elemental principle of Supreme Court review of state statutes that the construction given to a legislative enactment by the state's highest court is binding upon the United States Supreme Court. **Brown v. Ohio, supra; Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668, 674, 49 L.Ed. 2d 132, 138, 96 S.Ct. 2358 (1976); Grayned v. City of Rockford, 408 U.S. 104, 110, 33 L.Ed. 2d 222, 228, 92 S.Ct. 2294 (1972).**

It is clearly not the function of the United States Supreme Court to construe a state statute

contrary to the interpretation given to it by the state's highest tribunal. O'Brien v. Skinner, 414 U.S. 524, 531, 38 L.Ed 2d 702, 94 S.Ct. 740 (1974); Landmark Communications, Inc. v. Virginia, supra. Rather, the Supreme Court is to consider the state's highest court's interpretation as though it was written into the statute itself by the state legislature. Winters v. New York, 333 U.S. 507, 514, 92 L.Ed. 840, 68 S.Ct. 665 (1948); Poulos v. New Hampshire, 345 U.S. 395, 402, 97 L.Ed. 1105, 73 S.Ct. 760, 30 ALR 2d 987 (1953); Bellotti v. Baird, 443 U.S. 662, 61 L.Ed. 2d 797, 99 S.Ct. 3035 (1979), reh den. 62 L.Ed. 2d 121, 100 S.Ct. 185 (1979).

The aforementioned general rules of Supreme Court review of statutory construction apply with equal force to review of state statutes of limitation. Moore v. Illinois C.R. Co., 312 U.S. 630, 634, 85 L.Ed. 1089, 61 S.Ct. 754 (1941); Standard Oil Co. v. Tennessee ex rel. Cates, 217 U.S. 413, 422, 54 L.Ed. 817, 30 S.Ct. 543 (1910); Tioga R. Co. v. Blossburg & C.R. Co., 20 Wall 137, 22 L.Ed. 331 (1873) (holding that the construction of the New York tolling statute by the

highest court of New York is binding upon the Supreme Court.)

B. Statutes of Limitations Are Liberally Construed In New Jersey In Order To Preserve Parties Opportunities To Litigate Claims On The Merits.

New Jersey courts have consistently attempted to preserve plaintiffs' opportunities to have actions determined on the merits by liberally construing statutes of limitation. **Velmohos v. Maren Engineering Corp., supra; Galligan v. Westfield Centre Service, Inc., supra; Kaczmarek v. New Jersey Turnpike Auth., 77 N.J. 329, 338 (1978); White v. Violent Crimes Compensation Board, 76 N.J. 368, 379 (1978).**

This is in keeping with the basic tenet of law in New Jersey and throughout the United States that defendants have no fundamental right to protection of statutes of limitation, which are by definition arbitrary and subject to a large degree of legislative control. **Rosenberg v. Town of North Bergen, 61 N.J. 190 (1972); Campbell v. Holt, 115 U.S. 620, 29 L.Ed. 483, 6 S.Ct. 209 (1885); Chase Securities Corp. v. Donaldson, 325 U.S. 304, 314, 89 L.Ed. 1628, 65 S.Ct. 1137 (1945);**

Hopkins v. Kelsey-Hayes, Inc. 628 F.2d 801, 809 (3d Cir. 1980).

The New Jersey Supreme Court followed this elemental principle in Velmohos by liberally construing the tolling statute in question. First, the Court found that a foreign corporation which was amenable to New Jersey's long-arm jurisdiction was not thereby "represented" in New Jersey under N.J.S.A. 2A:14-22. Rather, the foreign corporation unrepresented in New Jersey but subject to long-arm service was subject to the tolling statute. 83 N.J. at 287, 288, 291. Second, New Jersey's highest tribunal found that in order to be "represented" under N.J.S.A. 2A:14-22, a foreign corporation must merely designate an agent for service of process within the State of New Jersey. Id. at 293, 296. Representation does not require a foreign corporation to file a certificate of authority under N.J.S.A. 14A:13-11.

While this Court is bound by this statutory construction regarding what is necessary for a foreign corporation to be "represented" in New Jersey, it is also evident that this statutory interpretation is entirely consistent with New Jersey

statutes, rules and case law. That is, designation of an agent for service of process pursuant to N.J.S.A. 2A:14-22 and N.J.Ct.R. 4:4-4(c)(1) does not require a foreign corporation not transacting business in New Jersey to file a certificate of authority under N.J.S.A. 14A:13-4. In fact, foreign corporations not transacting business are specifically permitted to defend any action or proceeding filed in any court in New Jersey. N.J.S.A. 14A:13-11(2); Bozzuto's Inc. v. Frank Kantrowitz & Sons, Inc., 117 N.J. Super. 146, 283 A.2d 907, 908 (App. Div. 1971). It is equally clear that foreign corporations not transacting business in New Jersey need not file a certificate of authority in order to affirmatively bring suit in the state courts. N.J.S.A. 14:13-3(2)(a); Eli Lilly & Co. v. Sav-On Drugs, Inc., 366 U.S. 276, 6 L.Ed. 2d 288, 81 S.Ct. 1316 (1961); Gulf Chemical & Metal Corp. v. Sylvan Chem. Corp., 122 N.J. Super. 499, 300 A.2d 878 (Law Div. 1973); aff'd 126 N.J. Super. 261, 314 A.2d 73 (App. Div. 1973).

The foregoing review of the statutory construction by the New Jersey Supreme Court in

Velmohos serves as the basis for an examination of the constitutionality of **N.J.S.A. 2A:14-22.**

POINT II

THE NEW JERSEY TOLLING STATUTE DOES NOT VIOLATE THE EQUAL PROTECTION, DUE PROCESS OR COMMERCE CLAUSES.

ATLA adopts in full the arguments raised by Respondents Cohn in opposition to Petitioner Searle's contention that **N.J.S.A. 2A:14-22** violates the Equal Protection, Due Process and Commerce Clauses of the Constitution. Amicus, in support of and as a supplement to Respondents' position, respectfully asserts the following.

A. The New Jersey Tolling Statute Is Entitled To A Strong Presumption Of Validity.

It is a basic principle of constitutional law that the New Jersey Tolling Statute, like any other legislative enactment, is presumptively valid. **Lockport v. Citizens for Community Action, 430 U.S. 259, 51 L.Ed. 2d 313, 97 S.Ct. 1047 (1977); Lindsey v. Normet, 405 U.S. 56, 71, 31 L.Ed. 2d 36, 49, 92 S.Ct. 862 (1972); McGowan v. Maryland, supra; Davies Warehouse Co. v. Bowles, 321 U.S. 144, 88 L.Ed. 635, 64 S.Ct. 474 (1944).** The heavy burden of explicitly demon-

strating the constitutional infirmity of the state statute is on the party challenging the legislative enactment. **San Antonio Independent School Dist. v. Rodriguez**, 411 U.S. 1, 36 L.Ed. 2d 16, 93 S.Ct. 1278 (1973); **Morey v. Doud**, supra; **Velmohos**, supra at 295.

B. The New Jersey Tolling Statute Does Not Deny Equal Protection Or Due Process Of Law To Unrepresented Foreign Corporations.

The issue presented by Petitioner is whether the classification drawn by the New Jersey tolling statute between foreign corporations who are "represented" within the State for purposes of service of process and those who are not "represented" lacks a rational basis and therefore violates their right to due process and equal protection under the United States Constitution.

As Petitioner Searle conceded below, the availability of the defense of the statute of limitation is not a fundamental right or privilege. This Court has so held in **Chase Securities Corp. v. Donaldson**, supra which reaffirmed the holding of **Campbell v. Holt**, supra that a repeal of the statute of limitation, reviving a creditor's right of action on a debt, does not deprive the debtor

of property without due process. The Court, in an opinion by Justice Jackson, stated as follows:

> Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. They are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost...They are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the voidable [sic] and unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate. Their shelter has never been regarded as what now is called a "fundamental" right or what used to be called a "natural" right of the individual [emphasis supplied]. He may, of course, have the protection of the policy while it exists but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control. 325 U.S. at 314 (citations & footnote omitted).

Because no fundamental right is implicated, review of the statutory classification would not require strict scrutiny [see Scherling v. Superior Court of Santa Clara County, 22 Cal. 3d. 493, 149

Cal. Rptr. 597, 602-03 (1978) (applying rational relationship standard of review in upholding statute tolling statute of limitation during criminal defendant's absence from state)] but merely a determination of whether "any state of facts reasonably may be conceived to justify it." Metropolitan Casualty Insurance Co. v. Brownell, 294 U.S. 580, 584 (1935).

New Jersey's denial of the Statute of Limitation to unrepresented foreign corporations does not even begin to "approach sensitive and fundamental personal rights" so as to trigger the application of the intermediate or middle tier level of scrutiny, which has been utilized by the Court in cases involving discrimination based upon gender or illegitimacy. See Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 172 (1972) (illegitimacy); Craig v. Boren, 429 U.S. 190, 210 (1976) (gender) (Powell, J., concurring). Thus, the applicable standard of review is not whether the statutory classification bears a "fair and substantial relation" to the stated object of the legislation [see Reed v. Reed, 404 U.S. 71, 76 (1971) (gender discrimination), citing F.S.

Royster Guano Co. v. Virginia, 253 U.S. 412, 416 (1920)], but rather whether the classification bears some rational relationship to legitimate state purpose. Weber, supra, 406 U.S. at 172. Williamson v. Lee Optical Co., 348 U.S. 483, 487-488 (1955).

Moreover, the Third Circuit correctly decided that the classification drawn by the New Jersey tolling statute between represented and unrepresented foreign corporations rationally furthers at least two legitimate state purposes. First, because an out-of-state corporation which has a local agent is much easier to identify and locate, the New Jersey legislature could have reasonably concluded that tolling the statute of limitation in favor of plaintiffs suing unrepresented corporations in New Jersey courts was necessary in order to give such plaintiffs additional time to identify and locate their defendants. Also, the New Jersey Court Rules make a real and substantial distinction between service of process on a locally represented corporation and long-arm service upon an unrepresented out-of-state corporation.

While service can be made under New Jersey Court Rule 4:4-4(c)(1) upon a corporation "by serving...the person at the registered office of the corporation in charge thereof," long-arm service upon an unrepresented foreign corporation requires that: (1) an attempt be made to serve the corporation within the state; (2) an affidavit be filed by the plaintiff's attorney "that after diligent inquiry and effort personal service cannot be made" within the state; and (3) a showing be made that service by mail upon the corporation will be "consistent with due process of law." Because of these additional burdens upon a plaintiff seeking to obtain long-arm service upon an unrepresented foreign corporation, the state legislature rationally concluded that tolling the statute of limitation in favor of such plaintiffs would give them the additional time needed to effect service and thereby eliminate the injustices that might otherwise result.

The Third Circuit, in upholding the distinction made by the New Jersey tolling statute against equal protection and due process attack, expressly followed the New Jersey Supreme Court's

decision on the exact same question in **Velmohos, supra.** Both the Third Circuit and New Jersey decisions are also in accord with the holdings and dicta in other courts of appeal and state high court decisions on similar issues. See **Zalatuka v. Metropolitan Life Insurance Co., 90 F.2d 230 (7th Cir. 1937)** (dicta) (state legislature may distinguish between domestic and foreign insurance companies for purposes of determining time within which suits on insurance policies may be instituted or be forever barred); **Dew v. Appleberry, 23 Cal.3d. 637, 153 Cal.Rptr. 219, 223 (1979)** (statute tolling statutes of limitation with defendant absent from state did not penalize exercise of fundamental right and was rationally related to alleviating "any hardship that would result by compelling plaintiff to pursue defendant out of state"); **Vaughn v. Deitz, 430 S.W. 2d. 487, 490 (Tex. 1968)** (upholding statutes of limitation while defendant was absent from state since distance of defendant from state may make it more expensive and difficult for plaintiff to locate defendant for purpose of effecting service of process by mail). Finally, this Court has upheld,

against an equal protection attack, an Indiana statute which prohibited foreign casualty insurance companies from limiting by agreement to less than three years the time within which a suit could be brought against them on their indemnity policies while permitting domestic casualty insurance companies to contract for any reasonable limitation period. **Metropolitan Casualty Insurance Co. v. Brownell, supra, 294 U.S. at 580-81.**

In **Clark v. Gulesian, 429 F.2d 405 (1st Cir. 1970), cert. denied, 400 U.S. 993 (1971),** application of Maine decisions rejecting the adoption of the "discovery" rule barred the plaintiff from maintaining a medical malpractice action even though the plaintiff did not learn of the defendant doctor's negligence until a second operation in 1969 revealed that a towel had been left inside the plaintiff's body during initial surgical treatment in 1952. In holding that the Maine statute of limitation as interpreted and applied by the Maine decisions was not unconstitutional as a denial of due process or equal protection, the First Circuit emphasized that Maine's rejec-

tion of the discovery rules was a "policy decision" and reasoned as follows:

> Unfortunate as the present result may be for the plaintiff, the state may reasonably recognize that a defendant has an interest in repose and in the avoidance of stale claims, however free of fault the claimant's delay may be. **429 F.2d at 406.** Accord, **Pittman v. United States, 341 F.2d 739, 741 (9th Cir.), cert. denied, 382 U.S. 941 (1965).**

Similarly, New Jersey's decision to toll the statutes of limitation in suits against nonresident unrepresented corporations was a policy decision; the fact that Petitioner may not have contributed to any delay in the filing of the action in the case at bar (and indeed may in fact have been amenable to long-arm service of process) does not preclude the state from reasonably concluding that plaintiffs in suits against unrepresented foreign corporations should generally have the benefit of additional time in which to locate and effect service of process upon their defendants.

C. The New Jersey Tolling Statute Does Not Violate The Commerce Clause.

The Commerce Clause does not by its terms

prohibit all State exercises of the Police Power which affect interstate commerce. Unless the statute in question creates an undue or discriminatory burden, it is valid. **Breard v. City of Alexandria, La., 341 U.S. 622, 95 L.Ed. 1233, 71 S.Ct. 920 (1951), reh den 342 U.S. 843, 96 L.Ed. 637, 72 S.Ct. 21 (1951).**

The New Jersey tolling statute does not create an undue burden on interstate commerce. No corporation is prevented from engaging in commerce within the state. No corporation is prevented from enforcing its rights or claims in the New Jersey Courts. Based upon the interpretation given to the statute in question by the New Jersey Supreme Court in **Velmohos, supra,** it is patently clear that no burdens on interstate commerce are present.

It is evident that foreign corporations doing business within the state must obtain a certificate of authority in accordance with **N.J.S.A. 14A:13-3.** The same statute, however, specifically states that it "shall not [emphasis supplied] be considered to be transacting business in this state,...by reason of...main-

taining, defending, or otherwise participating in any action or proceeding, whether judicial, administrative, arbitrative or otherwise, or affecting the settlement thereof or the settlement of claims or disputes..." Thus, the foreign corporation engaged solely in interstate commerce may either commence or defend any action without obtaining a certificate of authority.

The foreign corporation can be "represented" in New Jersey, enabling it to utilize the privilege of the statute of limitation and eliminate possible continued exposure to suit created by the tolling statute, simply "by the designation of an agent for service of process within the state." **Velmohos, supra at 293.** No certificate of authority need be obtained.

If the New Jersey Supreme Court had concluded that a foreign corporation would have to obtain a certificate of authority to be "represented" in the state, they would have so stated in **Velmohos, supra.** They did not. To suggest, as Petitioner Searle does, that a certificate of authority is required in order to avoid the effects of the tolling statute on a foreign

corporation is an invitation to this Court to construe the tolling statute differently from the interpretation given by New Jersey's highest court. ATLA respectfully submits that this Court does not have the right, or the power, to accept Petitioner's invitation. See Point I, supra.

It is patent that the tolling statute's only requirement for a foreign corporation is to designate an agent for service of process. Far from an attempt by the New Jersey legislature to burden interstate commerce, the tolling statute is a legitimate legislative attempt to ensure that litigants in the New Jersey Courts will not be prejudiced by an inability to locate a foreign corporation. Without the benefit of the statute as interpreted by the New Jersey Supreme Court in **Velmohos**, a plaintiff could have a claim barred by the statute of limitation due to his inability to locate a foreign corporation not represented in New Jersey.

Contrary to Petitioner's claim, corporations falling under the purview of the tolling statute are not unprotected. **Velmohos, supra at 293,** makes it clear that the defense of laches is

always available. Also, the statute of limitation will commence running on any claim as soon as the corporation becomes represented in New Jersey. It is clear that the tolling statute does not create the unlimited open-ended liability Petitioner contends. In fact, the statute is a very limited enactment to protect claims from being unfairly barred. There is no undue or discriminatory burden created.

CONCLUSION

Based upon the foregoing, ATLA respectfully submits that this Court should affirm the decision below.

Respectfully submitted,

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